

MAY 27 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

1650 Tysons Boulevard, Suite 200, McLean, Virginia 22102 (703) 506-3290 Fax (703) 506-3266

BOARD OF DIRECTORS

May 27, 1994

PRESIDENT

SONDRA LEE
SA Communication Services
Louisville, Kentucky

PRESIDENT-ELECT

LINDA TREMERE
Hubbard Broadcasting, Inc.
St. Paul, Minnesota

SECRETARY-TREASURER

VICKI L. MATHEWS
WCPX
Orlando, Florida

VICE PRESIDENTS

NANCY AKERS
Community Service
Backstage Issues
Los Angeles, CaliforniaKATHRYN B. BARDINS
Resource Development
Minneapolis, MinnesotaSHERRY CAWLEY
Membership
Turner Entertainment Networks
Atlanta, GeorgiaSTEPHANIE DUMEYER
Programming & Development
WAVE-TV
Louisville, KentuckyFRANCES LAROSE
Marketing
The Larose Group
San Francisco, CaliforniaLENORE TUTTLE-WILKAS
Strategic Planning
National Public Radio
Washington, DCMELODIE VIRTUE
Government Affairs
Haley, Bader & Potts
Arlington, VirginiaLUCILLE LUONGO
Northeast Area
The Katz Corporation
New York, New YorkNANCY HEMENWAY
Southeast Area
Tampa Bay Interconnect
Tampa, FloridaCONNIE WHITMAN
North Central Area
Perkins/Nichols Media
Indianapolis, IndianaPHYLLIS INGRAM
South Central Area
KRRT-TV
San Antonio, TexasCATHY DOWNING
Western Area
KPNX-TV
Phoenix, Arizona

DIRECTORS

MARCIE ERSOFF
Great American Broadcasting
Cincinnati, OhioDENISE GREENAWALT
Walt Disney Studios
Burbank, CaliforniaSANDRA HALL
WLWZ/WLWZ Radio
Greenville, South CarolinaNANCY J. LOGAN
KATZ Radio Group
Los Angeles, CaliforniaSTEPHANIE SHERWIN
KDDK
Little Rock, Arkansas

IMMEDIATE PAST PRESIDENT

SALLIE H. FORMAN
Forman & Associates
Washington, DC

MANAGER, ASSOCIATION SERVICES

ELLEN E. TEPLITZ
McLean, VirginiaThe Honorable Rachelle B. Chong
CommissionerFederal Communications Commission
Room 826

Washington, D.C. 20554

The Honorable Susan Ness
CommissionerFederal Communications Commission
Room 831

Washington, D.C. 20554

Re: Notice of Written and Oral *Ex Parte* Presentation

PP Docket No. 93-253 ✓

Competitive Bidding

and Gen. Doc. 90-314

Broadband Personal Communications Services

Dear Commissioners Chong and Ness:

Please let me express my appreciation to both of you and to your staff members, Richard Welch and Rosalind Allen, for taking the time out of your busy schedules to meet with American Women in Radio and Television, Inc. ("AWRT"), Executive Director Terri Dickerson-Jones and me this morning regarding the pending reconsideration of the FCC's rules on broadband Personal Communications Services ("PCS") and the auction rules that will govern their distribution. Pursuant to Section 1.1206(a)(1) and (2) of the Commission's Rules, this is to provide a notice in duplicate of written and oral *ex parte* presentations made in those rulemaking proceedings referenced above.

We met with you and your staff regarding the designation of spectrum blocks for which women, minorities, or small businesses could bid exclusively and urged the need for allocation of 20 MHz and 10 MHz blocks licensed on a Basic Trading Area basis. We left with you a copy of AWRT's comments filed with the FCC on November 9, 1993, already on file with the Commission in PP Docket No. 93-253. In addition, we left you materials prepared by the Coalition for Wireless Competition which is already contained in the record. We also supplied the enclosed three page memorandum summarizing the under-representation of women as owners of telecommunications businesses. Finally, I have enclosed a copy of a letter from AWRT to Commissioner Quello dated August 6,

No. of Copies rec'd
List ABCDE

061

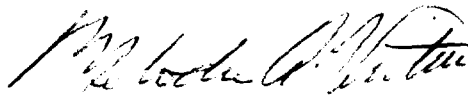
The Honorable Rachelle B. Chong
The Honorable Susan Ness
May 27, 1994
Page 2

1993, providing information about the few number of women-owned communications companies.

In sum, we urged the importance to women entrepreneurs that the FCC set aside blocks of spectrum, preferably two blocks (one 20 MHz and one 10 MHz), for small businesses and businesses owned by women and minorities ("Designated Entities") to bid on in the forthcoming auctions. While bidding credits may help minority and women "investors," we do not believe they will result in Designated Entities becoming "owners" of PCS companies. Further, we submit that all license areas should be Basic Trading Areas ("BTAs") and not Major Trading Areas ("MTAs"), since MTAs will be beyond the financial reach of most Designated Entities. If the Commission adopts a mixture of BTA and MTA license areas, BTAs will be further disadvantaged in competing for investors and customers against the wider area MTA licensees. Allocating 20 and 10 MHz blocks on a BTA basis will maximize the bidding opportunities for all participants while allowing the market to decide how best to aggregate spectrum and service areas.

If you have any questions, please do not hesitate to contact me directly at 703-841-0606.

Respectfully submitted,



Melodie A. Virtue
Vice President for Government Relations
American Women in Radio & Television, Inc.

Enclosures (2)

cc: The Honorable Chairman Reed Hundt
The Honorable Commissioner James Quello
The Honorable Commissioner Andrew Barrett
Richard K. Welch, Esquire
Rosalind Allen, Esquire
Ms. Terri Dickerson-Jones, AWRP Executive Director
Ms. Sondra Lee, AWRP National President
Ms. Linda Tremere, AWRP National President-Elect
MAV/blr

**PROVIDING A REALISTIC ECONOMIC OPPORTUNITY
FOR WOMEN-OWNED BUSINESSES TO PARTICIPATE IN PCS**

Women-owned businesses generated only approximately 1/2 of 1% of the total revenues generated by communications establishments in the United States in 1987. Statistics on the number of women-owned businesses in the communications field generally reveal that women have effectively been excluded from ownership interests in the communications industry. The award of spectrum licenses by competitive bidding will perpetuate this exclusion unless the competitive bidding rules adopted by the FCC include specific provisions to remedy women's exclusion from the communications industry and to address the barriers that women face in raising capital.

■ **Under-representation of Women-Owned Businesses in Telecommunications**

In 1987, women-owned businesses accounted for 30% of all firms in the United States and 13.9% of the gross receipts generated by all U.S. firms.^{1/} This figure stands in contrast to the fact that in 1987 women represented more than 51% of the population of the United States. In 1987, only 7,899 of the 4,114,787 women-owned firms were communications firms.^{2/} Even this statistic overstates the number of women-owned businesses involved in telecommunications. Communications firms, as defined by the Department of Commerce in its report, include women-owned television and radio broadcast firms and are not limited to telecommunications companies. Accordingly, the actual number of women-owned telecommunications companies is less than 7,899. Furthermore, even with this broad definition of "communications," sales and receipts generated by women-owned "communications" firms accounted for less than .5% of the revenues generated by all U.S. communications establishments.^{3/}

■ **Gender Discrimination in Access to Capital**

Four years ago, in recognition of the discrimination women face in all entrepreneurial endeavors, Congress enacted the Women's Business Ownership Act of 1988 (the "Act"). Findings incorporated into the Act by Congress provide an accurate account of the discrimination that women-business owners faced in 1988 and continue to face in 1993. These findings are applicable

^{1/} *Women Owned Business*, U.S. Department of Commerce (1990) (based on the 1987 economic census).

^{2/} *Id.*

^{3/} *Id.* In 1987, U.S. communications establishments generated over \$201 billion in revenue. Women-owned businesses accounted for \$866,330,000 of those revenues.

equally to the telecommunications industry. Congress found, in part:

(A) women owned business has become a major contributor to the American economy by providing goods and services, revenues, and jobs;

(B) over the past two decades there have been substantial gains in the social and economic status of women as they have sought economic equality and independence;

(C) despite such progress, women, as a group, are subject to discrimination in entrepreneurial endeavors due to their gender;

(D) such discrimination takes many overt and subtle forms adversely impacting the ability to raise or secure capital, to acquire managerial talents, and to capture market opportunities;

(E) it is in the national interest to expeditiously remove discriminatory barriers to the creation and development of small business concerns owned and controlled by women;

(F) the removal of such barriers is essential to provide a fair opportunity for full participation in the free enterprise system by women and to further increase the economic viability of the Nation.^{2/}

These findings continue to be relevant and accurate today as demonstrated by the 1992 Annual Report of the National Women's Business Council ("NWBC"). In addition to finding a general barrier to access to capital, the NWBC found that successful women-owned telecommunications companies did not overcome the obstacles for obtaining financing after they had reached a level of funding and profitability satisfactory for most other businesses:

Women in both high technology industries and telecommunications who actually had found funding in the \$6 to \$18 million range told of difficulties which seemed far beyond what should be expected for companies with records of successful and profitable operation.

Furthermore, venture capitalists who testified before the NWBC stated that "women-owned businesses, even those few seeking capital at the level which might interest venture capital

^{2/} 15 U.S.C. § 631(h).

sources, rarely fit the profile of the few ventures funded each year."

■ The Proposed Competitive Bidding Rules Do Not Provide A Realistic Opportunity for Women-Owned Businesses

The Omnibus Budget Reconciliation Act of 1993 requires the FCC to structure its competitive bidding rules to provide economic opportunity for women-owned businesses in the offering of licensed spectrum services and to disseminate licenses among a broad range of applicants, including businesses owned by women. The FCC has proposed to treat women-owned businesses and businesses owned by minorities differently under the competitive bidding rules. Specifically, the FCC has suggested that it may permit small businesses and rural telephone companies to pay their bids in installments while giving women-owned and minority-owned businesses tax certificates. The experience of women-owned companies in raising capital and the difficulties they have encountered (regardless of their size) require that women-owned companies also be authorized to pay their winning bid price in installments. Without the ability to pay the bid price in installments there effectively will be no opportunity for women-owned companies to compete successfully for PCS licenses or other spectrum-based services. PCS will be a capital intensive industry that will involve millions of dollars of cost in network deployment above and beyond the costs for purchasing spectrum. Without the ability to spread the spectrum payment out over time, women-owned businesses will be unable to acquire the capital to meet these costs.

■ Gender-Based Preferences In Competitive Bidding Rules are Constitutional

The allocation of Federal spectrum can be conditioned on practices that will not perpetuate the prevailing impaired access of women-owned business to ownership of companies operating radio-based networks licensed by the FCC. See *Fullilove v. Klutznick*, 448 U.S. 472, 475 (1980). The allocation of spectrum by the FCC is analogous to the allocation of Federal funds. Congress' remedial efforts to assure participation by minority groups excluded from the allocation of Federal resources have been upheld as constitutional. *Id.* Furthermore, promoting economic opportunity for women has been recognized by the Supreme Court as a substantial government interest that supports gender-based government policies. See *Califano v. Webster*, 430 U.S. 313, 317 (1977); see also *Associated General Contractors v. City and County of San Francisco*, 813 F.2d 922 (9th Cir. 1987); *Coral Construction Co. v. King County*, 941 F.2d 910, 932 (9th Cir. 1991). Numerous commentators have submitted evidence and legal analyses that demonstrates the constitutionality of gender-based preferences in licensing of spectrum-based services.



1101 Connecticut Avenue, N.W., Suite 700, Washington, D.C. 20036 (202) 429-5102 Fax (202) 223-4579

August 6, 1993

BOARD OF DIRECTORS

PRESIDENT

SONDRA LEE
SA Communication Services
Louisville, Kentucky

PRESIDENT-ELECT

LINDA TREMERE
Hubbard Broadcasting, Inc.
St. Paul, Minnesota

SECRETARY-TREASURER

CRIS STOVALL
WPTY-TV
Memphis, Tennessee

VICE PRESIDENTS

NANCY AKERS
Community Service
Backstage Issue
Los Angeles, California

KATHRYN B. BARDINS
Resource Development
KARE-TV
Minneapolis, Minnesota

SHERRY CAWLEY

Membership
Turner Entertainment Networks
Atlanta, Georgia

FRANCES LAROSE

Marketing
The Larose Group
San Francisco, California

JOANIE LeBARON
Programming & Development
Culver & Associates
Omaha, Nebraska

LENORE TUTTLE-WILKAS

Logic Planning
National Public Radio
Washington, DC

MELODIE VIRTUE

Government Affairs
Haley, Bader & Potts
Arlington, Virginia

LUCILLE LUONGO

Northeast Area
Katz Corporation
New York, New York

NANCY HEMENWAY

Southeast Area
Tampa Bay Interconnect
Tampa, Florida

CONNIE WHITMAN

North Central Area
Peltine/Nichols Media
Indianapolis, Indiana

PHYLLIS INGRAM

South Central Area
KART-TV
San Antonio, Texas

CATHY DOWNING

Western Area
KPNX-TV
Phoenix, Arizona

DIRECTORS

MARCIE ERSOFF
Great American Broadcasting
Cincinnati, Ohio

DENISE GREENAWALT

Walt Disney Studios
Burbank, California

SANDRA HALL

WALF/WCNN Radio
Atlanta, Georgia

NANCY J. LOGAN

Broadcasting & Cable Magazine
Los Angeles, California

SUZANNE McCOY

Media America Corporation
Phoenix, Arizona

STEPHANIE SHERWIN

3/KDDK
Rock, Arkansas

IMMEDIATE PAST PRESIDENT

SALLIE H. FORMAN
Forman & Associates
Washington, DC

EXECUTIVE DIRECTOR

DONNA F. CANTOR
American Women in Radio and Television
Washington, DC

The Honorable James H. Quello
Acting Chairman
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554

RE: Personal Communications Services

Dear Chairman Quello:

The Administration, Congress and the FCC over the past several years have increasingly been mindful of the needs of small businesses and businesses owned by women and minorities in the telecommunications industry. Legislation now pending before Congress concerning the spectrum auction contains a directive prompting the FCC to include these groups in the auction process. The Personal Communications Services (PCS) rulemaking currently under consideration at the Commission potentially offers a significant opportunity for companies owned by women to participate in a market bound for tremendous growth.

Although women constitute 53% of this country's population, they own and control only 7.1% of the broadcast stations surveyed by the FCC. *Congressional Research Service*, "Minority Broadcast Station Ownership and Broadcast Programming: Is There a Nexus?" The Census Bureau's Survey of Women-Owned Business showed that 30% of U.S. businesses, excluding regular corporations, were owned by women, but the industry subgroup containing transportation, communications, and public utilities, accounted for only 1.9% of the women-owned firms. U.S. Small Business Administration, *The State of Small Business: A Report to the President, 1991*, at 252 and 263.

Entry into the personal communications services marketplace can provide women a place in the next wave of telecommunications technology. If the barriers to entry and a limited number of licenses preclude women in this round, it is certain that their severe underrepresentation in the communications industry will not change and opportunities will grow even more scarce in the future.

The Honorable James H. Quello
August 6, 1993
Page 2

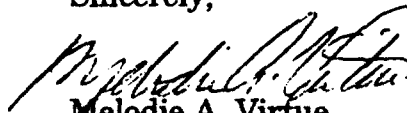
It is crucial that the decision makers at the FCC design a licensing structure and auction process that promotes open entry for all participants in the PCS marketplace. In order to maximize competition and guarantee equal access to the auction, the FCC must institute a licensing structure with small licensing areas, multiple licenses and small blocks of spectrum.

On Wednesday, July 28, 1993, I had the opportunity to meet, along with other members of the Coalition for Wireless Competition, with Brian Fontes of your staff, staff members from the other two Commissioners' offices and John Winston, the Director of the Small Business Activities Office of the FCC. We discussed our interest in PCS ventures and the important role that small businesses bring to a new market ripe for technological innovation.

By this letter I am urging you to take whatever steps necessary to establish a licensing structure and auction process in which women are given equal opportunity in the process. The U.S. Treasury stands to gain billions of dollars in revenue from the auction of these airwaves if it takes appropriate action. In turn, many small and minority and women owned companies, if able to enter this arena, can contribute new opportunities for employment and innovative ideas in the communications industry.

I have attached the Statement of Principles of the Coalition for Wireless Competition, which our organization supports. Open entry to the PCS arena for entrepreneurs who have historically proven their ability to bring about ground-breaking technological advances, take risks in new markets, produce jobs and vie with large companies to serve consumers with new products, serves the public interest.

Sincerely,



Melodie A. Virtue
Vice President
Government Relations

Enclosure